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Paper No. 86

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AIRMAIL

In re Application of :  
Berna :  
Application No. 08/580,493 :  
Filed: December 29, 1995 :  
For: PROCESS FOR MAKING A VERSATILE :  
CLAMPING DEVICE DESIGNED TO :  
HOLD OBJECTS WITHOUT DAMAGING :  
THEM, SUCH A DEVICE AND ITS USE :  
:

**COPY MAILED**

**MAY 28 2002**

**OFFICE OF PETITIONS**

**ON PETITION**

This is a decision on the petition under 37 CFR 1.181 and 1.53,<sup>1</sup> filed February 25, 2002, and supplemented April 4, 2002, seeking a \$250 refund and a filing date of August 16, 2001, for the previously filed CPA.

The petition under 37 CFR 1.181 is **granted**.

The petition under 37 CFR 1.53 is **granted**.

A final rejection was mailed to petitioner on March 16, 2001. On May 14, 2001, an improper amendment was filed. The amendment was improper in so far as it failed to place the application in condition for allowance. An Advisory action was mailed on June 12, 2001.

Sometime in August of 2001, petitioner mailed an application under 37 CFR 1.62 despite the fact that 37 CFR 1.62 was abolished December 1, 1997. As a courtesy to applicant, instead of rejecting and returning the application as filed under a rule which no longer exists, the Office chose to treat the filing under 37 CFR 1.53(d).<sup>2</sup>

The application was accompanied by an amendment which failed to comply with the requirements of 37 CFR 1.121. The Office did not reject the amendment and mail a final rejection. Instead, the Office chose to notify applicant of the non-compliance of the amendment and provide applicant a time period during which he could fix the problem.

Per 37 CFR 1.1, patent applications must be mailed to "Assistant Commissioner for Patents, Washington, D.C. 20231." The Office will also accept hand-carried (by applicant or carrier such

<sup>1</sup> The letter states that it should be treated as a complaint under 37 CFR 1.3, but the relevance of 37 CFR 1.3 to the instant situation cannot be determined.

<sup>2</sup> An application filed under 37 CFR 1.62 will be treated under 37 CFR 1.53(d). As an additional safeguard and courtesy, the Office has determined that if an application under 37 CFR 1.53(d) is filed (or an application under 37 CFR 1.62), and the application is ineligible to be filed under 37 CFR 1.53(d), the Office will treat the application as a RCE. The instant application was eligible under 37 CFR 1.53(d) and therefore was not treated as a RCE.

as Federal Express) application papers at "OIPE Customer Service Window, 2011 South Clark Place, Crystal Plaza Building 2, Room 1B03, Arlington, VA, 22202." Procedures are in place at both locations to ensure that patent papers are not lost and to ensure that patent papers are given the proper date of receipt. Petitioner failed to comply with 37 CFR 1.1. Instead, petitioner sent the application papers to a tower which contains Trademark employees and which does not handle patent matters.

The application was received by Trademarks and was subsequently forwarded to the Office of Initial Patent Examination (OIPE). Office records do not indicate the date the application was received by Trademarks. Office records indicate the application papers were received by OIPE on August 23, 2001.

Petitioner has presented records from Federal Express indicating that a package from petitioner was received on August 16, 2001. A review of computer records indicates that the instant application is the only application petitioner has pending. Therefore, the Office assumes the package contained the CPA at issue.

Petitioner seeks a refund of \$250 alleging that a three month (rather than a two month) extension of time was unnecessary in so far as the application was filed on August 16, 2001.

Analysis:

The Office has recognized the importance of a filing date to an applicant and has chosen not to rigorously enforce the requirements of 37 CFR 1.1 due to the importance of such a filing date. MPEP 501(III) states, "At the present time, use of the wrong mailing address will not affect the filing date assigned to any application or correspondence received in the USPTO, except as specified in 37 CFR 1.1(a)(3)(iv) [which relates to correspondence to the Office of Solicitor]."

Upon consideration of the full record, the Office deems the CPA and request for a two month extension of time to have been received on August 16, 2001.

The prior decision stated that a petition fee of \$130 was due for a petition to establish the filing date of an application. To the extent that such a fee is due, the fee is hereby waived *sua sponte*. Petitioner should note that this fee is automatically refunded if, upon consideration of the merits of the petition, the petition is granted. In other words, if the instant petition had been accompanied by \$130, the \$130 would be refunded since the error has established the application was received on August 16, 2001.

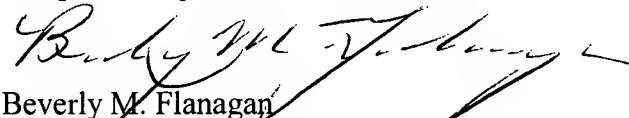
A refund of \$250 will be scheduled. A check for such a sum will be mailed or the \$250 will be credited to petitioner's credit card.

Applicant states, "It is rather strange that each time in the past when applicant filed a continuing application, there was an attempt to put his application in jeopardy." Hopefully, the above decision will help petitioner to recognize that the assignment of an August 23, 2001, filing date by OIPE was not an affirmative attempt by the Office to deprive applicant of his rights or his money.

Petitioner states that an employee of the Office orally provided him with the incorrect address to mail the patent application. To the extent an employee of the Office provided petitioner with incorrect information, the Office apologizes to petitioner.

The file is now being forwarded to Technology Center 3700 to change the filing date of the CPA and request for an extension of time to August 16, 2001, and for further prosecution of the application.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



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